Kanagasingam a/l Anantham v Timbalan Menteri Dalam Negeri, Malaysia & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01(A)-390–06 OF 2018
ZALEHA YUSOF, HANIPAH FARIKULLAH AND KAMALUDIN MD SAID JJCA
13 MARCH 2019

Criminal Law — Dangerous Drugs (Special Preventive Measures) Act (Malaysia) — Section 5(4) — Whether inquiry officer under the Act required to submit his report to Home Minister expeditiously although s 5(4) did not prescribe any time period — Whether non-stipulation of time period in s 5(4) allowed s 54(2) of the Interpretation Acts 1948 and 1967 to be invoked to require report to be submitted 'with all convenient speed' — Whether non-fixing of time period was deliberate to enable inquiry officer to carry out his inquiry carefully and comprehensively — Whether the Act required Home Minister to consider reports of both the investigating officer and the inquiry officer before he made either a detention order or restriction order

The appellant was arrested on 31 March 2017 under s 3(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') on suspicion of being involved in the trafficking of dangerous drugs. On 26 April 2017, the police investigating officer submitted his complete report on the appellant to the first respondent ('R1') pursuant to s 3(3) of the Act. Based upon that report, an inquiry officer appointed under the Act carried out an inquiry under s 5(2) of the Act to determine whether there were reasonable grounds for believing that the appellant had been or was associated with any drug trafficking activity. After interviewing the appellant, examining the evidence of relevant witnesses and studying the investigating officer's report, the inquiry officer submitted her inquiry report to R1 on 23 May 2017 pursuant to s 5(4) of the Act. After considering the reports of both the investigating officer and the inquiry officer, R1, on being satisfied that the appellant's activities were prejudicial to public order, issued an order on 29 May 2017 restricting the appellant to the Mukim of Muar for a period of two years. The appellant applied to the High Court by way of judicial review to set aside the restriction order on the ground that the inquiry officer's 'delay' in submitting her report to R1 26 days after the investigating officer had submitted his report, rendered the order invalid. The instant appeal was against the High Court's dismissal of the appellant's application. Section 5(4) of the Act stated that 'An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act'. Since the Minister did not make any regulation to fix a time period for the submission of the reports under

either s 3(3) or s 5(4) of the Act, the appellant argued that the inquiry officer should have submitted her report to R1 'within reasonable time' or 'with all convenient speed' because s 54(2) of the Interpretation Acts 1948 and 1967 provided that where written law did not prescribe any time period 'within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises'. The appellant contended that just because no time period was specified under s 5(4) that did not mean the inquiry officer could take her time to submit her report to R1 at her own discretion. He also said that in their affidavits, the respondents never explained the reason for the inquiry officer's 'delay' in submitting her report to R1.

Held, unanimously dismissing the appeal with costs:

(1) Section 5(4) of the Act did not impose any duty on the inquiry officer to submit her report to R1 within a certain time. The Minister had not, by regulation, prescribed a timeframe for the words 'within such period'. As such, the appellant's complaint that there was a 'delay' of 26 days by the inquiry officer to submit her report to R1 and that there was no affidavit by the respondents to explain the 'delay' had no merit. So long as R1 had received the said report and considered it and did not make the restriction order outside the 60-day period prescribed under s 3(2) of the Act his order was valid and enforceable (see paras 42 & 44).

(2) Since the Minister did not make any regulation to prescribe the time or period for ss 3(3) and 5(4) of the Act, it could not be said that the law had imposed a duty on the inquiry officer to submit the inquiry report within a prescribed time. Section 54(2) of the Interpretation Acts 1948 and 1967 only applied when the prescribed occasion arose. In the present case, the prescribed occasion never arose because there was no regulation to prescribe time (see para 27).

(3) The inquiry officer, who was not a police officer, could not be expected to complete the inquiry report and submit it to R1 in a hurried manner. The intention of the Act in providing for an inquiry to be conducted by an independent person was to allow the inquiry officer to fully analyse and consider all the evidence taken during the inquiry exercise before being satisfied that there was reasonable belief that the appellant had been or was associated with any activity relating to or involving trafficking in dangerous drugs. The inquiry was to check and balance the detention and investigation of the appellant by the police under s 3(1) of the Act. The process of investigation or finding out information required time. The court believed the reason why the Minister had not prescribed any period for submission of the inquiry report was to enable the inquiry officer sufficient time to conduct the inquiry properly and with care. If a time was fixed for the submission of the report, it could result in the inquiry being done hurriedly or in a cavalier or improper manner which

might result in R1 making an order which was prejudicial to the appellant and might be held to be invalid (see para 39).

[Bahasa Malaysia summary

Perayu telah ditangkap pada 31 Mac 2017 di bawah s 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta tersebut') kerana disyaki terlibat dalam pengedaran dadah berbahawa. Pada 26 April 2017, pegawai penyiasat polis telah mengemukakan laporan lengkapnya tentang perayu kepada responden pertama ('R1') menurut s 3(3) Akta tersebut. Berdasarkan laporan tersebut, seorang pegawai siasatan yang dilantik di bawah Akta tersebut telah menjalankan siasatan di bawah s 5(2) Akta tersebut untuk menentukan sama ada terdapat alasan munasabah bagi mempercayai bahawa perayu telah atau terlibat dengan apa-apa kegiatan pengedaran dadah. Selepas menemu duga perayu, memeriksa keterangan saksi-saksi relevan dan mengkaji laporan pegawai siasatan itu, pegawai siasatan tersebut telah mengemukakan laporan sisatannya kepada R1 pada 23 Mei 2017 menurut s 5(4) Akta tersebut. Setelah mempertimbangkan laporan kedua-dua pegawai siasatan dan pegawai siasatan tersebut, R1, yang berpuas hati bahawa kegiatan perayu adalah prejudis kepada ketenteraman awam, telah mengeluarkan perintah pada 29 Mei 2017 melarang perayu ke Mukim Muar untuk tempoh dua tahun. Perayu telah memohon kepada Mahkamah Tinggi melalui semakan kehakiman untuk mengetepikan perintah larangan atas alasan bahawa 'delay' pegawai siasatan mengemukakan laporannya kepada R1 iaitu 26 hari selepas pegawai siasatan telah mengemukakan laporannya, menjadikan perintah itu tidak sah. Rayuan ini adalah terhadap penolakan Mahkamah Tinggi berhubung permohonan perayu. Seksyen 5(4) Akta tersebut menyatakan bahawa 'An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act'. Oleh kerana Menteri tidak membuat apa-apa peraturan untuk menetapkan tempoh masa bagi laporan itu dikemukakan di bawah sama ada s 3(3) atau s 5(4) Akta tersebut, perayu berhujah bahawa pegawai siasatan tersebut sepatutnya telah mengemukakan lamporannya kepada R1 'within reasonable time' atau 'with all convenient speed' kerana s 54(2) Akta Tafsiran 1948 dan 1967 memperuntukkan bahawa di mana undang-undang bertulis tidak menetapkan apa-apa tempoh masa 'within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises'. Perayu menegaskan bahawa hanya disebabkan tiada tempoh masa ditetapkan di bawah s 5(4) ia tidak bermaksud pegawai siasatan boleh mengambil masanya untuk mengemukakan laporannya kepada R1 atas budi bicaranya. Dia juga menyatakan bahawa dalam afidavit mereka, responden-responden tidak menjelaskan sebab untuk 'delay' pegawai siasatan mengemukakan laporannya kepada R1.

Diputuskan, sebulat suara menolak rayuan:

(1) Seksyen 5(4) Akta tersebut tidak mengenakan apa-apa kewajipan ke atas pegawai siasatan untuk mengemukakan laporannya kepada R1 dalam tempoh tertentu. Menteri tidak, melalui peraturan, menetapkan jangka masa untuk perkataan-perkataan 'within such period'. Oleh demikian, aduan perayu bahawa terdapat 'delay' 26 hari oleh pegawai siasatan untuk mengemukakan laporannya kepada R1 dan bahawa tiada afidavit oleh responden untuk menjelaskan 'delay' tidak mempunyai merit. Selagi R1 telah menerima laporan tersebut dan mengambil kiranya dan tidak membuat perintah larangan di luar tempoh 60 hari yang dinyatakan di bawah s 3(2) Akta tersebut perintahnya adlaah sah dan boleh dikuatkuasakan (lihat perenggan 42 & 44).

(2) Oleh kerana Menteri tidak membuat apa-apa peraturan untuk menetapkan masa atau tempoh bagi ss 3(3) dan 5(4) Akta tersebut, ia tidak boleh dikatakan bahwa undang-undang telah mengenakan kewajipan ke atas pegawai siasatan untuk mengemukakan laporan siasatan itu dalam tempoh yang ditetapkan. Seksyen 54(2) Akta tersebut hanya terpakai apabila kejadian yang ditetapkan timbul. Dalam kes ini, kejadian yang dinyatakan tidak timbul kerana tidak ada peraturan untuk menetapkan masa (lihat perenggan 27).

(3) Pegawai siasatan tersebut, yang bukan pegawai polis, tidak boleh diharapkan untuk menyiapkan laporan sisatan dan mengemukakannya kepada R1 dengan cara tergesa-gesa. Niat Akta tersebut memperuntukkan siasatan dijalankan oleh orang berasingan adalah untuk membenarkan pegawai siasatan menganalisis sepenuhnya dan mengambil kira semua keterangan yang diambil sepanjang amalan siasatan sebelum berpuas hati abahwa terdapat kepercayaan munasabah bahawa perayu telah atau terlibat dengan apa-apa kegiatan berkaitan atau terlibat dengan pengedaran dadah berbahaya. Siasatan itu adalah untuk menyemak dan mengimbangi tahanan dan siasatan peryu oleh polis di bawah s 3(1) Akta tersebut. Proses siasatan atau penemuan maklumat memerlukan masa. Mahkamah percaya sebab kenapa Menteri tidak menetapkan apa-apa tempoh untuk laporan siasatan dikemukakan adalah bagi membolehkan pegawai siasatan masa yang mencukupi untuk menjalankan siasatan sewajarnya dan dengan berhati-hati. Jika satu masa ditetapkan untuk laporan itu dikemukakan, ia akan mengakibatkan siasatan itu dilakukan dengan tergesa-gesa atau tidak betul yang mungkin mengakibatkan R1 membuat perintah yang prejudia kepada perayu dan mungkin diputuskan sebagai tidak sah (lihat perenggan 39).]

Notes

For cases on Dangerous Drugs (Special Preventive Measures) Act (Malaysia), see 4(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 1077–1078.

Cases referred to

Abdul Wahed v Timbalan Menteri Dalam Negeri and Penguasa Kanan, Pusat Pemulihan Akhlak, Simpoang Renggam, Johor Darul Takzim (Criminal Application No BA-44–265–10 of 2017) (unreported), HC (refd)

Lock Wee Kock V Menteri Hal Ehwal Dalam Negeri & Anor [1993] 3 MLJ 691, SC (folld)

Menteri Dalam Negeri & Ors v Gopal a/l R Subramaniam [2017] MLJU 706; [2017] 6 CLJ 593, FC (refd)

Ramoo Maniam v Lembaga Pencegahan Jenayah & Penguasa Kanan, Pusat Pemulihan Khas Simpang Renggam, Johor [2017] 1 LNS 1188, HC (folld)

Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min, Re [1976] 2 MLJ 245, FC (refd)

Thavaselvan a/l Govindasamy v Lembaga Pencegahan Jenayah & Anor [2016] MLJU 561, HC (folld)

Zaidi Zakaria v Menteri Dalam Negeri (Criminal Application No 44–3–01 of 2016) (unreported), HC (folld)

Legislation referred to

Dangerous Drug (Special Preventive Measures) Act 1985 ss 3, 3(1), (2), (3), 5, 5(2), (3), (4), 6(1), (1)(a), (1)(b), (3), 11C, 22, 22(2)(d)
Federal Constitution art 5, 5(2)
Interpretation Act 1948 and 1967 s 54, 54(2)
Prevention of Crimes Act 1959 ss 6, 10(2)
Rules of Court 2012 O 53

Appeal from: Application for Judicial Review No PA25–37–08 of 2017 (High Court, Pulau Pinang)

MM Athimulam (Athimulan & Co) for the appellants.
Muhammad Sinti (Legal Advisor Office, Ministry of Home Affairs) for the respondent.

Kamaludin Md Said JCA:

INTRODUCTION

[1] The appellant was arrested on 31 March 2017 pursuant to s 3(1) of the Dangerous Drug (Special Preventive Measures) Act 1985 ('the SPM Act'). The Deputy Minister of Home Affairs issued a restriction order against the appellant on 29 May 2017 for two years under s 6(3) of the SPM Act, restricted him to Mukim Muar and during the two years' period, the appellant must comply with conditions stated in paras (a)–(h) in the restriction order and the appellant cannot leave the area without the authority of the State Commissioner of Police.

[2] An application for judicial review under O 53 of the Rules of Court 2012 was filed by the appellant on 28 July 2017 and was dismissed by the High Court on 8 June 2018. Hence, this appeal was brought by the appellant.

THE LAW

[3] We agreed that the restriction order made against the appellant with the conditions stipulated therein had restricted his freedom of movement which violated his personal liberty under art 5 of the Federal Constitution. Under art 5(2) of the Constitution, the court is to inquire into the complaint and, unless satisfied that the restriction is lawful, shall set aside the restriction order and he shall be set free. The law applicable in dealing with the appellant's personal liberty is similar to the law applicable in an application of writ of habeas corpus.

[4] In *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v Datuk James Wong Kim Min* [1976] 2 MLJ 245 at pp 250–251, the Federal Court had observed that the detention without trial which deprived the detained person of his fundamental liberties, the procedures relating to the detention under the statutes of which he is detained must be strictly followed:

> Preventive detention is the detention of a person without trial as opposed to punitive detention where a person is detained after a trial in a court of law in which he is proved to have committed an offence punishable under certain provisions of the penal law.
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> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. *In a matter as fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty*. The material provisions of the law authorizing detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be literally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. (Emphasis added.)
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> See also *SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 MLJ 149; [2009] 6 CLJ 705; *Murugan a/l Supparamaniam v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 4 MLJ 488; *Muhammad Jailani bin Kasim v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* [2006] 6 MLJ 403.

[5] It means that every step which is necessary for the making of a detention order is subject to review by the court. With clear principle of the law in mind,

A the issue before us is whether the restriction order made against the appellant by the first respondent was in accordance with the procedure under the SPM Act.

THE GROUNDS

B

[6] There were four grounds of appeal stated in the appellant's written submission. However, the appellant proceeded only with one main issue in respect of non-compliance of procedure under s 5(4) of the SPM Act which according to appellant's counsel, the inquiry report by the inquiry officer was C not submitted to the Deputy Minister within the reasonable time or with the convenient speed.

[7] It was submitted that the reports specified in s 6(1)(a) and (1)(b) of the SPM Act play a very important role in making the restriction order against the D appellant. The Minister must consider these reports before making the restriction order. They are therefore pre-conditions to the exercise of power under s 6(3) of the SPM Act. They are part of the decision making process. They amount to procedural requirements governing the exercise of the discretion by the Minister in making a restriction order within the meaning of E s 11C of the SPM Act. A breach of this requirement is therefore subject to judicial review.

[8] The unique report to be considered by the Minister under s 6(1)(b) of the SPM Act must be regular and must comply with mandatory requirement ie F s 5(4) of the SPM Act which reads:

> (4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act.

G **[9]** In the present case, ASP Jadie Yap Siew for the respondent submitted his complete report to the inquiry officer on 26 April 2017 and the first respondent, Deputy Minister of Home Affairs, received the inquiry officer's report 28 days later, ie on 23 May 2017. In reliance of both these reports ie the investigating report by the police officer and the inquiry officer's, only then on H 29 May 2017, the Minister issued the restriction order.

[10] The appellant submitted that after receiving the complete report from the investigating officer, s 5(4) of the SPM Act imposes a duty on the inquiry officer to submit a report in writing to the Minister at all convenient speed. I Section 5(4) of the SPM Act is silent with regard to the time of which speed it must be done, and which the report must be made to take effect. It does not mean inquiring officer has a complete discretion in determining the date where no time frame is prescribed for the doing of an act in a statutory provision, it must be read with s 54(2) of the Interpretation Act 1948 and 1967 (Act 388)

which says that:

> 54 Computation of time
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> (1) In computing time for the purpose of any written law —
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> ...
>
> (2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[11] The appellant referred to various authorities which supported his contention. For example, in the case of *Ramoo Maniam v Lembaga Pencegahan Jenayah & Penguasa Kanan, Pusat Pemulihan Khas Simpang Renggam, Johor* [2017] 1 LNS 1188 the learned High Court judge held that under s 6 of the Prevention of Crimes Act 1959 ('the PCA'), no time frame is provided and if time is not provided, then s 54 of the Interpretation Act 1948 and 1967 (Act 388) on computation of time is applicable. The words, 'as soon as possible' in s 6 of the PCA must mean that the inquiry must be done within the convenient speed. The learned judge agreed with the applicant that the inquiry officer was informed of the applicant's remand order on 17 December 2016 but only met the applicant on 21 December 2016 and conducted the inquiry on 11 January 2017. The learned judge was of the view that the inquiry on the applicant should have been conducted as early as 17 December 2016 or when he first met the applicant on 21 December 2016. The inquiry done on 11 January 2017 was found not within the convenient speed and the delay of 25 days is unreasonable. The learned judge found that there was non-compliance of procedure under s 6 of the PCA and on this ground the restriction order made against the applicant was set aside. The applicant's application to be released from the restriction was allowed.

[12] In *Zaidi Zakaria v Menteri Dalam Negeri* (Criminal Application No 44–3–01 of 2016) (unreported), the Shah Alam High Court held that the inquiry done on the applicant after 11 days was unreasonable delay and the respondent had not complied with the procedure under s 6 of the PCA. The learned judge set aside the restriction order made against the applicant and allowed the application.

[13] In another case from Shah Alam High Court in *Abdul Wahed v Timbalan Menteri Dalam Negeri and Penguasa Kanan, Pusat Pemulihan Akhlak, Simpoang Renggam, Johor Darul Takzim* (Criminal Application No BA-44–265–10 of 2017) (unreported) where the learned judge held that the inquiry done by the inquiry officer on the applicant after 26 days under s 5(4) of the SPM Act was not done within the convenient speed. In that case, the inquiry officer received the report from the investigating officer under

s 3(2) of the SPM Act on 5 July 2017 and commenced physical inquiry on the applicant under s 5(4) on 31 July 2017. The appellant submitted that *Abdul Wahed*'s case was on appeal by the senior federal counsel on behalf of the respondents to the Federal Court and the appeal was dismissed on 16 August 2018.

[14] Finally, the appellant submitted that none of the affidavits affirmed by the respondents contain any explanation for the delay. The inquiry officer never give any explanation. It was further submitted that the breach of s 5(4) of the SPM Act amounts to mandatory non-compliance with a procedural requirement governing the making of the restriction order, therefore, submitted that the said restriction order is invalid.

OUR DECISION

[15] The issue before us is whether the inquiry officer had complied with procedure provided under s 5(4) of the SPM Act. It is the appellant's case that the inquiry officer had failed to submit the report to the Deputy Minister within the reasonable time or within the convenient speed when the time is not prescribed.

[16] The authorities submitted before us show that the High Courts are inclined to hold that any delay in taking certain actions under the SPM Act which provides for actions shall be carried out within certain period of time as breach of procedure which cannot be condoned and such non-compliance of procedure is fatal to the respondents.

[17] We agreed with the law as it stands. Some provisions in the statutes may prescribe time period by providing fixed hours, days or weeks and etc for an action to be taken and in some cases it just leaves it open by providing non-prescribed time period by using the words like 'within reasonable time', 'as soon as possible' or 'forthwith' for certain action to be taken. We agreed that it is trite that where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed.

[18] The Federal Court in the case of *Menteri Dalam Negeri & Ors v Gopal a/l R Subramaniam* [2017] MLJU 706; [2017] 6 CLJ 593 in giving effect of the word, 'forthwith' under s 10(2) of the PCA, had held as follows:

> [17] Having considered all the cases and the comments of the learned authors referred to aforesaid we would hold that the word 'forthwith' in s 10(2) of the POCA is to be construed as 'as soon as reasonable practicable' having considered all the facts of the case and not' 'then and there' or 'immediate'.
>
> [18] We would direct that in all applications for habeas corpus grounded on s 10(2)

of the POCA, revolving around the word 'forthwith', the court should approach the said applications in the following manner viz:

(a) if the facts of the case show that there was a delay in the officer having custody of the applicant in serving a copy of the finding of the inquiry officer on that person, the court must then look at the affidavit of the respondent to ascertain whether the respondent has explained the delay sufficiently; and

(b) the court then must consider in the circumstances of the case and the explanation for the delay, whether the officer acted without unreasonable delay and as soon as practicable.

[19] We did not find any issue with regard to s 6 of the PCA where it provides as follows:

6 Person in custody to be brought before the Inquiry Officer.

Every person remanded in custody under Section 4 shall, if not sooner released, as soon as possible be brought before an Inquiry Officer.

[20] We also agreed with approach taken by the learned High Court judges in *Ramoo Maniam*'s case, *Zaidi Zakariah*'s case and *Thavaselvan a/l Govindasamy v Lembaga Pencegahan Jenayah & Anor* [2016] MLJU 561 case submitted by the appellant because the cases concern the provision of s 6 of the PCA which requires the inquiry on the applicants shall be done as soon as possible and the words 'as soon as possible' is clearly stated under the said section which were interpreted as shall be done with the convenient speed, without unreasonable delay and as soon as practicable. Similarly, the Federal Court held in *Gopal R Subramaniam's* case when s 10(2) of the PCA provides that the serving a copy of the finding of the inquiry officer on that person must be done 'forthwith'. The word 'forthwith' is to be construed as 'as soon as reasonable practicable' having considered all the facts of the case and not 'then and there' or 'immediate'.

[21] The appeal before us does not concern the issues in ss 6 or 10(2) of the PCA raised in the above cases. The issue in this appeal is whether the same principle applies to s 5(4) of the SPM Act which provides that an inquiry officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under the SPM Act.

[22] The appellant heavily relied on the case of *Abdul Wahid*, because the issue raised is related to s 5(4) of the SPM Act which is relevant and similar as the issue raised in the present case. The appellant urged upon us to follow this case because according to him the case was on appeal by the senior federal counsel for the respondents to the Federal Court and the appeal was dismissed on 16 August 2018. The appellant did not produce the written grounds from

A the Federal Court. Although the appellant produced the order of the Federal Court dated 16 August 2018, and tried to convince us that there was only one issue raised, ie delay under s 5 of the SPM Act, it was our view that without the written grounds, we would not be able to know whether the appeal was dismissed on the said issue raised. We cannot speculate whether the decision
B was based on delay issue or it could be based on some other reasons. We cannot agree with the appellant that we are bound by the decision of the Federal Court in *Abdul Wahid*'s case.

C **[23]** Upon careful reading on the provision of s 5(4) of the SPM Act, it is our view that caution needs to be taken before applying s 54(2) of the Interpretation Act 1948 and 1967 (Act 388) on the computation of time in s 5(4) of the SPM Act. Although s 5(4) of the SPM Act employs the words, 'submit his report in writing to the minister within such period', it cannot be
D blatantly interpreted that the report must be submitted within the convenience speed without reading further that such period 'as may be prescribed by the Minister by regulations made under the Act'.

[24] The pertinent point is whether 'such period' mentioned in s 5(4) is
E prescribed by the Minister by regulation made under the SPM Act. We find none. The period is never prescribed by the Minister in the regulation. It is our view that until and unless 'such period' mentioned in s 5(4) is prescribed by the Minister by the regulation, it cannot be interpreted that there is a prescribed time under s 5(4) of the SPM Act. Hence, it must be accepted that there is no
F time prescribed by the Minister for the inquiry report to be submitted to the Minister.

[25] The same principle applies to s 3(3) of the SPM Act where the investigating report by the investigation officer under s 3(2) of the SPM Act
G must be submitted to the inquiry officer and the Minister within *such period as may be prescribed by the Minister by regulations made under the Act*. The period is never prescribed by the Minister by the regulation. Hence, there is no time regulated for the investigating report to be submitted to the inquiry officer and Minister.
H

[26] The power for Minister to make regulations is provided under s 22 of the SPM Act which provides as follows:

I 22 Power to make regulations —

(1) The Minister may make regulations to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of subsection (1) such regulations may —

(a) provide for the maintenance and management of places of

detention and for the discipline and treatment of persons detained therein and different regulations may be made for different places of detention;

(b) prescribe the form of the register, and such other forms as may be necessary or expedient to be used in connection with the matters dealt with in this Act or in any regulations made thereunder;

(c) require all or any class of registered persons to carry identity cards, provide for the form, issue, production, inspection, cancellation, alteration, endorsement and replacement of any such cards, and the substitution thereof for identity cards issued to those persons or to persons of that class under any other written law, and for all other matters necessary or expedient in connection with any such cards or the carrying thereof or the enforcement of any such regulations, including the prescription of penalties not exceeding, in respect of any offence, a fine of five thousand ringgit or imprisonment for a term of three years or both; and

(d) prescribe anything which may be prescribed under this Act.

[27] In our view, para (d) of sub-s (2) is the relevant power for the Minister to prescribe time frame for the investigation report to be submitted by the inquiry officer to the Minister under s 3(3) and for the inquiry officer to submit the inquiry report to the Minister under s 5(4) of the SPM Act. The Minister does not make any regulation to prescribe such time or period for ss 3(3) and 5(4) of the SPM Act. When there is no regulation by the Minister to prescribe time, it cannot be said that the law has imposed a duty on inquiry officer to submit the report within the prescribed time. Section 54(2) of the Interpretation Act 1948 and 1967 (Act 388) only applies when the prescribed occasion arises. In the present case, the prescribed occasion never arose because there is no regulation to prescribe time.

[28] Section 5(4) says that such period as may be prescribed by the Minister by regulations made under the SPM Act and s 22 of the SPM Act gives the discretionary power to the Minister to make regulations to carry out the purposes of SPM Act particularly para (d) to prescribe anything which may be prescribed under this Act and when the Minister does not exercise his power to prescribe anything that may include to prescribe time on reasons best known to the Minister, the Court is in no position to question the discretion of the Minister. The Minister is an executive who is carrying executive function under the SPM Act.

[29] In the Supreme Court case of *Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 3 MLJ 691, the facts are very similar with the present case where the appellant had been arrested and detained by the police under s 3(1) of the SPM Act, on the 57th day of his arrest, the Deputy Minister

of Home Affairs issued a detention order under s 6(1) of the SPM Act for the appellant to be detained for two years at the Pusat Pemulihan Akhlak, Pulau Jerejak. An application for habeas corpus and for the release of the appellant was made to the High Court but was dismissed. The appellant appealed. It was argued on appeal that it was mandatory for the Minister to fix the periods for the submission of reports by the investigating officer and inquiry officer under sub-ss 3(3) and 5(4) of the SPM Act, which provide that the reports shall be submitted within such period 'as may be prescribed by the Minister'. It was argued that this should be treated as mandatory and the Minister must prescribe the periods by regulations. In dismissing the appeal, the court held as follows:

(1) The *words 'as may be prescribed by the Minister'* found in ss 3(3) and 5(4) of the Act ought to be treated as conferring a power to prescribe, exercisable at the discretion of the Minister, and not as mandatory. The fact that no period had been prescribed by the Minister for the submission of reports under ss 3(3) or 5(4) of the Act did not vitiate the process leading to the detention order made by the Minister.

(2) The provisions of the Act gave the police the power to detain an arrested person in police custody for a period not exceeding 60 days. In this case, the detention order was made by the Minister on the 57th day from the date of arrest and was therefore valid.

The court was of the view that:

> The use of the word 'may' or 'shall' has led to some confusion in the interpretation of provision of a statute. In ordinary usage, the word 'may' is permissive, and the word 'shall' is imperative. The courts have always construed these words with reference to the context in which it is used. In order to find out whether these words are being used in a directory or mandatory sense, the intent of the Legislature should be looked into, along with the pertinent circumstances. If it appears to be the settled intention of the Legislature to convey the sense of compulsion, then whether the word 'may' or 'shall' is used, it has the mandatory effect. Perhaps the task of the court in interpreting these words would be solved if the Interpretation Acts 1948 and 1967 (consolidated and revised 1989) were to contain such provisions as that found in s 37 of the Barbados Interpretation Act
>
> – Laws of Barbados Cap 1 which states:
>
> > In an enactment passed or made after 16 June 1966, the expression 'shall' shall be construed as imperative and the expression 'may' as permissive and empowering.
>
> The significance of such a provision in the Interpretation Act will remind the legal draftsman to always confine the use of the word 'shall' to its mandatory sense, in contrast to the use of the word 'may' which denotes a permission or discretion.

[30] Be that as it may, in our view it does not mean that in the case of the report by the investigating officer under s 3(3) Act and the report by the inquiry

officer were never received by the Minister at any time. It is not disputed that both reports of the investigating officer under s 3(3) Act and the inquiry officer under s 5(4) of the SPM Act are pre-conditions to the making of detention order under s 6(1) or restriction order s 6(3) of the SPM Act by the Minster.

[31] Section 6(1) of the SPM Act says as follows:

> 6 Power to order detention and restriction of person
>
> (1) Whenever the Minister, after considering —
>
> (a) the complete report of the investigation submitted under subsection 3(3); and
>
> (b) the report of the Inquiry Officer submitted under subsection 5(4),
>
> is satisfied with respect to any person that such person has been or associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order direct that such person be detained for a period not exceeding two years.

[32] In the appellant's case, the Minister issued the restriction order under sub-s 6(3) of the SPM Act.

[33] The opening words in s 6(1) of the SPM Act, is the words 'Whenever the Minister after considering —'. The words 'whenever' according *The Merriam–Webster Dictionary* means 'whatever time'. *Oxford Advanced Learner's Dictionary* defines 'whenever' as 'at any time', 'on any occasion' or every time'. Cross-refer to s 5(4) of the SPM Act, it fortifies our view that there is no time limit for the inquiry report to be submitted to the Minister because the Minister does not prescribe the period or time by regulation. The words, 'prescribe' is defined by *Oxford Advanced Learner's Dictionary* as 'to say what should be done or how should be done'. Logically speaking, it does not matter when the inquiry report is to be submitted whether within reasonable time or at the convenient speed or not because the Minister does not regulate when the inquiry report should be submitted to him. Be that as it may, it is our view that the mandatory requirement under s 5(4) of the SPM Act is for the inquiry officer to submit the inquiry report to the Minister for his consideration failing which the procedure under s 5(4) has not being complied with. We are also of the view that the words 'whenever' or at 'whatever time' appearing in s 6(1) of the SPM Act, shows that the Minister is obliged to receive the reports and consider the report at any time before the expiry of the detention under s 3 of the SPM Act.

[34] The deputy Minister in his affidavit affirmed on 16 November 2017 at para 7 says that on 26 April 2017, he received the complete report related to the

appellant's activities from ASP Jodie Yap Siew Wen under s 3(3) of the SPM Act and on 23 May 2017 the report from the inquiry officer under s 5(4) of the SPM Act. At para 9, the Deputy Minister says that on 29 May 2017 after considering the reports he was satisfied that the appellant's activities are prejudicial to public order and directed the appellant be issued with a restriction order under s 6(3) of the SPM Act.

[35] It is not disputed that the inquiry officer had commenced the inquiry on the appellant on 8 May 2017 under s 5(2) of the SPM Act. It is also our view that the commencement of the inquiry on 8 May 2017 after about twelve days from the date of submission of the investigating report on 26 April 2017 was within reasonable practicable time.

[36] Section 5(2) of the SPM Act says as follows:

> (2) Upon receiving the report under subsection 3 (3), the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

[37] Section 5(3) of the SPM Act provides as follows:

> (3) An Inquiry Officer may, in his discretion, for the purpose of subsection (2) —
>
> (a) require the attendance before him of a person detained under section 3;
>
> (b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
>
> (c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
>
> (d) require the production of any document or other thing in his opinion relevant to the case.

[38] The affidavit of the inquiry officer Nadia bt Mohd Izar affirmed on 8 November 2017 at para 6, she confirmed receiving the complete investigating report from ASP Jodie Yap Siew Wen under s 3(3) of the SPM Act on 26 April 2017. At para 7 she said that on 8 May 2017, she conducted the inquiry on the appellant under s 5(2) of the SPM Act. At para 9, she said that she took statement from the appellant and after completion, the statement was read back to the appellant and the appellant understood and confirmed the statement. She also said that beside the appellant statement, she had to carefully examine evidence of witnesses who were associated with the appellant's case. At para 10, she said that after hearing the appellant and considered the statement by the appellant and carefully examined the witnesses

evidence including the complete report of investigation submitted by ASP Jodie Yap Siew Wen related to the activities of trafficking in dangerous drugs, she then prepared a written report to the Deputy Minister of which based on her inquiry, she was satisfied that there was reasonable believe that the appellant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs. At para 11, she said that she submitted the complete report to the Deputy Minister on 23 May 2017.

[39] In the above circumstances, it cannot be expected that the inquiry officer to complete inquiry report and submit the report to the Deputy Minister in a hurried manner. The appellant was arrested and detained under the preventive laws which detention is without trial and affect his personal liberty. The inquiry officer must be allowed to fully analyse and consider all the evidence taken during the inquiry before being satisfied that there was reasonable believe that the appellant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs. The intention of the SPM Act providing an inquiry to be conducted by an independent person ie the inquiry officer who is not a police officer is for purposes of check and balance toward the detention and investigation made by the police officer under s 3(1) of the SPM Act. The official process of investigation or finding out information must require certain period of time. We believed, the reason why the period for submission of the inquiry report is or has not been prescribed by the Minister by regulation is to allow the inquiry officer to conduct the proper inquiry, applied her mind carefully and prepare her complete report to be submitted to the Minister. If the inquiry report to be submitted to the Minister is fixed within the prescribed time, it may result in the inquiry being done in a cavalier or an improper manner. The improper application of mind by the inquiry officer in her reports to the Deputy Minister which report the Deputy Minister may consider in making a restriction order against the appellant, would result with the order made be prejudicial to the appellant and may be held as invalid.

[40] Section 3(1) of the SPM Act allows police officer to arrest and detain, any person for the purposes of investigation. Section 3(2) of the SPM Act provides that any person arrested and detained may be detained in police custody for a period not exceeding 60 days without an order of detention having been made in respect of him under sub-s 6(1) provided that:

(a) he shall not be detained for more than 24 hours except with the authority of a police officer of or above the rank of inspector;

(b) he shall not be detained for more than 48 hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police; and

A (c) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may
B be, shall forthwith report the same to the Minister.

[41] The appellant was arrested on 31 March 2017 pursuant to s 3(1) of the SPM Act. On 5 April 2017, the investigating officer, ASP Jodie Yap Siew Wen
C conducted investigation on the appellant. In the investigation, he recorded the statement of the appellant and also taken other witnesses' evidence related to the activities of the appellant in trafficking of dangerous drugs. On 26 April 2017 he submitted the complete report of the investigation to the inquiry officer and the Deputy Minister. The inquiry officer after conducting her
D inquiry on the appellant submitted her report to the Deputy Minister on 23 May 2017. The Deputy Minister after considering the report from the investigating officer and the inquiry officer, made a restriction order against the appellant on 29 May 2017.

E **[42]** It is important to note that the whole process from the time of arrest and detention under s 3(1) of the SPM Act on 31 March 2017 until the Deputy Minister made the restriction order on 29 May 2017, did comply with the 60 days prescribed under s 3(2) of the SPM Act. Detention after 60 days by the police will be automatically unlawful except where an order of detention under
F s 6(1) or restriction order under s 6(3) of the SPM Act having been made against the appellant by the Deputy Minster. Based on this circumstances, we were of the view that there is no time prescribed for the inquiry report to be submitted to the Deputy Minister. What matters most is the inquiry report was submitted to the Deputy Minister and the Deputy Minister has considered the
G report and had made the restriction order well within the 60 days required under the law. At the end of 60 days without an order under s 6(1) or 6(3) of the Act, the appellant must be released from the detention by the police.

H **[43]** Our view in the present case is consistent with the view held by the Supreme Court case of *Lock Wee Kock v Menteri Hal Ehwal Dalam Negeri & Anor* where the court had held as follows:

> It will be seen that Parliament has fixed the time periods under s 3(2) of the Act, but leaves it entirely to the Minister to fix the period within which the report is to be
I submitted under ss 3(3) and 5(4) of the Act. We are quite appreciative of the reasons why Parliament leaves it to the discretion of the Minister to fix the period. The Minister has to take into consideration the amount of work and time which is taken up by the police and the inquiry officer to complete their investigation and inquiry. A simple and straight forward case may take few days to complete, while a complicated one may take longer. If the Minister fixes a time period within which

the police investigating officer is to submit his report under s 3(3) or the inquiry officer under s 5(4) of the Act, that period may not be sufficient where the case will involve a lengthy investigation or inquiry and this may result in the reports not being complete in the sense that matters which ought to be investigated or inquired into are left out. This will impose difficulty on the Minister to act under s 6(1) of the Act, when deciding to make or not to make the detention order.

The time may come when the Minister, through his experience in dealing with this matter, can positively assess what should be the time period within which the police investigating officer or the inquiry officer can certainly complete his report and, until the Minister can come to that conclusion, he should not fix the time by exercising his powers under ss 3(3) and 5(4) of the Act. We are of the view that for the reasons given, the words 'as may be prescribed by the Minister' found in both sections ought to be treated as conferring a power to prescribe, exercisable at his discretion, and not mandatory. The fact that no period has been prescribed by the Minister within which the reports are to be submitted by the investigating officer under s 3(3) or by the inquiry officer under s 5(4) of the Act does not vitiate the process leading to the detention order being made by the Minister.

Under s 3(2) of the Act, the arrested person cannot be detained for more than 60 days without a detention order being issued by the Minister. We note that in this case, the detention order was made by the Minister on the 57th day from date of arrest.

CONCLUSION

[44] Based on the aforesaid, it was our decision that the complaint by the appellant that there was a delay of 26 days by the inquiry officer to submit her report to the deputy Minister under s 5(4) of the SPM Act had no merit. Section 5(4) of the SPM Act does not impose a duty on the inquiry officer to submit the inquiry report to the Deputy Minister within certain time. The words 'within such period' has not been prescribed by the Minister by regulation. It was our view that as long as the Deputy Minister had received the said report and considered it and did not make the restriction order outside the 60 days prescribed under s 3(2) of the SPM Act, the order made by the Deputy Minister was valid and enforceable. Since we had found that there was no issue pertaining to the submission of the report of the inquiry officer under s 5(4) of the SPM Act, the contention by the appellant that there was no affidavit explaining the delay in submitting the report did not arise.

[45] In the result, it was our unanimous decision that the appellant's appeal was dismissed with costs of RM1,000 to be paid to the respondents and the deposit was refunded to the appellant.

Appeal unanimously dismissed with costs.

Reported by Ashok Kumar